

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2522 CUTTACK, SATURDAY, DECEMBER 29, 2007/PAUSA 8, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd December 2007

No. 13014—li/1(J)-32/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th July 2007 in Industrial Dispute Case No. 1/2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of District Transport Manager (Admn.), Orissa State Road Transport Corporation, Berhampur, Dist. Ganjam and its workman Shri Purna Chandra Panigrahi, was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE

INDUSTRIAL DISPUTE CASE No. 1 OF 2007

Dated the 26th July 2007

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Br.),
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

The District Transport Manager (Admn.), . . . First Party—Management
Orissa State Road Transport Corporation,
Berhampur,
AT/P.O. Berhampur,
Dist. Ganjam.

Vrs.

Its Workman Shri Purna Chandra Panigrahi, S/o Late Radha Mohan Panigrahi, At Guma, P.O. Phasiguda, Dist. Ganjam.	.. Second Party—Workman
---	-------------------------

Under Sections : 10 and 12 of the Industrial Disputes Act, 1947.

Appearances :

For the First Party—Management	.. Shri G. P. Jena, Law Officer, O.S.R.T.C., Bhubaneswar.
<hr/>	
For the Second Party—Workman	.. Self
Date of Argument	.. 12-7-2007
Date of Award	.. 26-7-2007

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following disputes vide their Order No. 11354(4), dated the 23rd December 2006 for adjudication of the following disputes :

SCHEDULE

“Whether the action of the management, District Transport Manager (Admn.), O.S.R.T.C., Berhampur in termination of the services of Shri Purna Chandra Panigrahi, Watchman with effect from the 13th September 2001 is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. This case seems to have been originated being the outcome of the reference submitted by the Government before this Court for determination of issue regarding the validity or justifiability of the termination entertained by the management in respect of the present workman. The Management appears to have unfurled contention of the plea that termination was effected basically on the unsatisfactory explanation furnished by the workman on account of his long absence for a period of 5 years without representation of any leave application. The plea has been refuted by the workman on the point that though he was remained absent for a specific period from the 1st April 1996 to 1st July 1996 and the 1st January 2001 to the 20th March 1997 for a negligible period basing up on the leave application submitted he was not permitted to resume his duty inspite of joining report submitted till he was terminated from the service thereby accumulated period of absence which was not the act of himself but the delinberated act of the management. In addition to that it is contended by him that the management having not complied the standing order for taking disciplinary action for such unauthorised absence the termination so prevailed in his favour shall be entailed void *ab initio*.

3. The workman though worked was a Watcher being appointed since 1986, continuously without any break he has not committed any latches in duty during the tenure of

his service. The leave of absence was originated on the point of his ill health for which he applied from the 1st April 1996 to the 1st July 1996 and for any period from the 1st January 1997 to the 20th March 1997 on basis of leave application submitted vide Exts. 1 and 2 being exposed by Ext. 3. The postal receipt granted in respect of the despatch letter presumption can be done easily that once it is despatched by the proper authority, receipt of matter had been entertained by the addressee. This aspect has not been assailed by the management for the non-receipt. Equally joining report was also submitted vide Ext. 4 consequent upon his fitness on the 21st March 1997 which is contended by the postal receipt vide Ext. 5. Presumption is also equally attributed that the proper despatch of the letter along with its acceptance by the Management. There appears no intention of the workman to remain unauthorised absence from his duty which may not be otherwise called as abandonment or relinquishment of the service as claimed by the management. The termination or the abandonment service can be adjudged by taking into the true intention of the workman for remaining absent. In this respect the decision of the Hon'ble Supreme Court may be referred to in *G. T. Lade Vrs. Chemicals and Fibers Indian Ltd.*, A. I. R. 1997, Supreme Court, Page 582. The Hon'ble Supreme Court while considering the question of abandonment service laid down a principle that in order to constitute a abandonment of service there must be failure to perform duties pertaining to the office with actual and imputed intention on the part of the employee to abandon or relinquish the office. The intention may be entreated from the acts and the conduct of the employees, length of absence and other relevant circumstances. The workman appears to be not actuated by any *mala fide* intention to remain absent without any cause. The intention is cum-commitment with his conduct of showing reasonable cause of his absence by furnishing leave application in due course drawing attention of the authority. The absence of the workman was very negligible in period, i.e. for five (5) months and after that he intended to resume in the duty as evidenced from Ext. 4. In the circumstances an inordinate long absence cannot be completely inferred. The non-giving of permission to the workman for resumption of duty does not come under the latches of the workman. The deliberate action of the management in not permitting him to join saves the period of absence, so as to construe the intention of the workman to be not actual or imputed intention as defined in the ruling passed by the Hon'ble Supreme Court. The cause shown by the workman under the above circumstances is considered to be genuine and befitting to the principles as laid down above and he cannot be considered to have voluntarily abandoned his service, which was originated out of the circumstances.

4. Retrenchment may be defined in termination of service for any reason whatsoever and the question of abandonment of job is not included in the definition whatsoever the reason may be for remaining long absence can be construed as retrenchment but not automatic termination. The reliance has been placed a decision rendered in *D. Souza* case

in A.I.R. 1982, Supreme Court, Page 854. Whether presumption of automatic termination is not attributed with the above situation proper compliance is to be effected as per the provisions of the I. D. Act. If the workman is continuous in service for a period of one year preceding to the date of termination inclusive of period of absence.

5. Since the absence was on basis of proper formalities to be maintained it may be included in the period of one year as construed under Section 25-F of the I. D. Act. Termination must be preceded by an issuance of notice or notice pay in lieu of such notice. The Hon'ble Supreme Court has also prescribed guideline on the point that whatsoever the status of the workman, i.e. daily rated worker, casual labourer or piece rated worker that must be proceeded with departmental enquiry for determination of the absence or otherwise leading to termination. Unless an enquiry is resorted to by the management equally taking the decision of the Supreme Court. The management should follow the same principles and prescribe some guidelines in harmony with the decision of the Supreme Court vide Ext. 9 to resort to an enquiry by the management in every case of the termination in order to avoid increasing litigation and avoiding loss to the department. Though the management appears to have called for an explanation and in support of an explanation of report as received by the workman no action was taken in light of Ext. 9. Consequent upon disapproval of same explanation submitted by the workman no reasonable opportunity seems to have been given to the workman to adduce evidence in the support of reasonable cause submitted by him. There appears a lapse committed by the management for not complying with the principles of natural justice and also violated the direction given by him higher authority vide Ext. 9. The cumulative analysis of the above facts and circumstances of the case the conclusion is inevitable that the act entertained by the management in terminating service of the workman is purely illegal and unjustified which is not binding on the workman.

6. The squeal of the permutation will not automatically give a scope for passing the order of reinstatement with full back wages. The workman seems to have not pleaded anything in the claim statement or in the evidence adduced during course of trial that he was not gainfully employed during the period of disengagement or sustained financial starvation during the said period. Unless it is pleaded by the workman no relief shall be granted for full back wages, except for consideration to be effected with some half back wages with reinstatement. The management has not taken any plea for closure of the establishment and non-availability of the post. It may be noted that the right to life as the fundamental right of every worker to maintain his livelihood. The right to work is a part and parcel of right to livelihood and the Directed Principles of State Policy under Article 39(A) in the Indian Constitution also protects the service condition of the worker. Unless there is right to work the question of livelihood would be at a stake and the family members of the worker would be starved without any food and clothings. In the circumstances the protection of the workers can be well maintained if they be given the chance of having worked in the establishment. The reinstatement is a positive effect of the legislation which will lead the Court to a conclusion that the worker is entitled to reinstatement not as he was but with the entrustment of work on the basis of daily wages in the capacity as instructed earlier. Therefore the workman is entitled to reinstatement with 20% of back wages. The Award is passed *Son contest*.

ORDER

7. The reference is answered accordingly on contest. The management is directed to reinstate the workman on daily wages basis. The workman is entitled to reinstatement in his post on daily wage basis with 20% of back wages.

Dictated and corrected by me.

G. K. MISHRA
26-7-2007
Presiding Officer
Labour Court, Jeypore
Koraput

G. K. MISHRA
26-7-2007
Presiding Officer
Labour Court, Jeypore
Koraput

By order of the Governor
P. MALLICK
Under-Secretary to Government